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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7103 of 2005

Tulsiram S. Shinde & anr.
...Petitioners

V/s.

Asiatic Society of Mumbai
& Ors. ...Respondents

Mr. R.D. Bhat for the Petitioners

Mr.A.P.Vanarse, AGP for the Respondents

CORAM : B.H.MARLAPALLE,J.
DATED : 23rd November, 2007

P.C.

Heard Mr. Bhat, the learned counsel for the Petitioners who had challenged the termination of their service w.e.f. 30-6-1994 in Reference(IDA) no. 470/1997 and Reference (IDA) no. 471/1997 respectively before the Labour Court at Mumbai. Both the references have been decided by the common award dated 13-9-2004 and have been allowed. The relief granted to the workman by the award dated 13-9-2004 reads as under:-

"The second party workman namely Shri Tulsiram S. Shinde in Reference (IDA)no. 470/1997 and Shri Deepak P.Shelte in Reference (IDA)no. 471/1997 should be paid 50% backwages by the second party

no. 2 State Central Library from the date of termination i.e. 30-6-1994 till date of passing of the award and Shri Shinde and Shelte should apply for the post of peon with the first party no. 2 through the Employment Exchange and if there are posts available of peons then State Central Library to consider them in preference to outsiders."

2. The Petitioners are aggrieved by the IInd part of the award namely the denial of reinstatement and asking them to approach the State Central Library through the Employment Exchange for the post of peon if so available and their claims to be considered in preference to outsiders.

3. There is no dispute that by appointment order dated 18-7-1992 both the petitioners were appointed as peons on temporary basis in response to their application dated 2-5-1992. In terms of Press and Registration of Books Act, 1867 every publisher is required to submit a copy of every book published within the State of Maharashtra to the State Government and the State Government had no infrastructure to maintain such books except those published in Marathi, Gujarati and Kanada at the relevant time and, therefore,this task was handed over to the Asiatic Society which was registered under the Societies Registeration Act. The Government of

India decided to bifurcate the Society and the Library by end of June 1994 and thus State Central Library was established. Some of the employees of the Society were to be absorbed in the State Central Library but in the meanwhile the Government of Maharashtra permitted the Society to appoint 6 watchmen to guard the books and 3 of them were posted at Bandra and 3 were posted at Churney Road and they were working in the shifts of 8 hours. The Petitioners were such temporary appointees and the Petitioners were not taken on the rolls of the State Central Library and were discontinued w.e.f. 1-7-1994. Hence,they raised an industrial dispute contending that their termination of service was retrenchment and it was an illegal retrenchment. Their demands for reinstatement, therefore, came to be referred for adjudication in the above referred two references as per the order passed by the Dy. Commissioner of Labour under section 19(4) of the Industrial Disputes Act, 1947.

4. It appears that the first party i.e. the Asiatic Society, Mumbai and State Central Library had taken a plea while opposing the reference that both workmen were temporary recruits. It was specifically stated in their appointment order that they would be discontinued at any time without notice and even though they had put in more than 240 days of service in the preceeding 12 months,

their discontinuation did not amount to retrenchment as defined under section 2(oo) of the Industrial Disputes Act, 1947 and it was contended that their cases were in the exception clause (bb) of Section 2(oo). On referring to the evidence adduced by both the parties, the Tribunal held that in the instant case section 2(oo)(bb) was not applicable and on the other hand the workmen were temporary appointees and,therefore, while they were discontinued in breach of the provisions of section 25F, they could not be reinstated in Government Employment. The learned Judge of the Labour Court more particularly referred to the evidence of Mrs. Vimal Shah who was examined by the Asiatic Society. She had stated in her deposition that all the employees on the rolls of Asiatic Society as on 30-6-1994 were given choice before bifurcation either to opt for regular establishment on the Asiatic Society or in the State Central Library. Out of 25 Peons and Havaldars on the rolls of Asiatic Society, 23 peons and one Havaldar opted for employment with the State Central Library whereas the present petitioners' case was not considered for such permanent absorption inspite of their option because they were on temporary rolls. It was under these circumstances that the Labour Court did not grant reinstatement to the Petitioners in Government Employment and the termination of service though held to

be in breach of the provisions of section 25F of the

Industrial Disputes Act, they could not be reinstated in the Government service and infact they were not in the Government service even when they were appointed as temporary peons/watchmen.

5. It is also to be noted that the impugned award has not been challenged by either the Asiatic Society or by the State Central Library as of now and,therefore,the findings of the Labour Court on the issue of illegal termination of service and more particularly temporary service have attained finality.

6. So far as denial of 50% backwages is concerned, the onus to prove that the workman had remained unemployed during the intervening period was on them and no evidence in this regard has been placed on record. Mr. Bhat, therefore, rightly challenged only the second part of the award i.e. denial of reinstatement in service.

7. In my considered opinion, the Labour Court neither committed any error apparent on the face of record nor its order denying reinstatement to the Petitioners could be termed as perverse so as to call for interference under Article 227 of the Constitution of India.

Petition is rejected summarily.

[B.H.MARLAPALLE,J.]